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Nos. 14-556, 14-562, 14-571 & 14-574

# In the Supreme Court of the United States

JAMES OBERGEFELL, ET AL.,
*Petitioners,*

—v—

RICHARD HODGES, Director,
Ohio Department of Health, ET AL.,
*Respondents.*

On Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

## BRIEF OF AMICUS CURIAE GARDEN STATE EQUALITY IN SUPPORT OF PETITIONERS

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## INTEREST OF *AMICUS CURIAE*

*Amicus curiae* Garden State Equality ("GSE") is New Jersey's largest organization advocating for the civil rights of lesbian, gay, bisexual, and transgender ("LGBT") individuals and the greater LGBT community.[1] Since its founding in 2004, GSE has grown to more than 125,000 members and has successfully advocated for the passage of no less than 213 LGBT hate-crime, antidiscrimination, and anti-bullying laws in New Jersey. GSE also led the campaign for New Jersey to ratify a marriage equality bill, which was successfully passed by the New Jersey Legislature in 2012, before being vetoed by the Governor. GSE spearheaded a campaign to override that veto.

In addition to its organizing, education and advocacy related to LGBT issues in New Jersey, GSE participated as a plaintiff in *Garden State Equality v. Dow*, which successfully challenged New Jersey's laws precluding same-sex couples from marrying, and relegating them to civil unions. That lawsuit resulted in the legalization of same-sex marriage in

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[1] The parties have consented to the filing of this brief. Respondents issued a blanket consent to the filing of all amicus briefs on behalf of either party. *See* Docket Nos. 14-556, 14-562, 14-571, 14-574. A Letter of Consent from Petitioners has been filed with the Clerk of the Court in accordance with Supreme Court Rule 37.2(a). Pursuant to Rule 37.6, no counsel for any party has authored this brief in whole or in part, and no person or entity, other than the above-mentioned *amicus curiae* or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

New Jersey in October 2013. *See Garden State Equality v. Dow*, 216 N.J. 314 (2013).

GSE has a strong interest in the Court's decision in this case, which addresses an issue identical to that presented in GSE's New Jersey litigation–the constitutionality of a State's denial of marriage licenses to same-sex couples. In campaigning for marriage equality, as it did for many years, GSE documented the experiences of same-sex couples in New Jersey who were denied marriage, including the various ways in which New Jersey's denial of marriage harmed same-sex couples. GSE brings that knowledge and understanding to bear as *amicus curiae* in this case and urges this Court to reverse the judgment of the United States Court of Appeals for the Sixth Circuit.

## SUMMARY OF ARGUMENT

This case presents the question whether the Equal Protection Clause of the Fourteenth Amendment requires a state to license a marriage between two people of the same sex, and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. *Amicus curiae* GSE respectfully submit that the laws of Kentucky, Michigan, Ohio and Tennessee withholding the right to marry from gay and lesbian couples–and denying recognition of out-of-state same sex marriages–violate the Equal Protection Clause of the Fourteenth Amendment. As *amicus curiae* shows in describing the experience of civil unions in New

Jersey, the only way to protect same-sex couples from the grossly unequal and demeaning treatment to which they are accordingly subjected is to afford them the right to marry. Neither civil unions nor any other legal arrangement short of actual marriage–even those that ostensibly afford couples identical legal rights–will suffice.

As *amicus curiae* GSE argues below, the significance accorded the word "marriage" and the injury caused by denying same-sex couples the right to marry are profound. Marriage is the term that society uses to recognize the deepest, most significant, loving relationship into which two adults can enter. As GSE has documented, government officials, private businesses and organizations, as well as individual citizens in New Jersey and elsewhere, all recognize the uniqueness of marriage; no other designation can ever capture that same meaning or convey that same value.

Nor is relegating same-sex couples to a parallel status of "civil union" or "domestic partnership" a mere semantic difference. Since *United States v. Windsor*, 570 U.S. ___, 133 S. Ct. 2675 (2013), which struck down the Defense of Marriage Act ("DOMA"), federal agencies have overwhelmingly determined that federal benefits will only be provided to same-sex couples who are legally married. Moreover, as *amicus curiae* sets forth below, New Jersey's differentiation between marriage and civil union profoundly and concretely altered the lives of same-sex couples, resulting in civil union partners being denied access to their loved ones in hospitals; being deprived of health insurance by their partners'

employers; incurring additional financial burdens in obtaining goods and services; suffering additional costs to acquire additional legal protections for each other and their children; and, ultimately, experiencing psychological and dignitary injuries. Such treatment of same-sex couples can only be justified by a compelling state interest, which no state has been able to demonstrate under the appropriate constitutional standards.

Rather, all of the harms that same-sex couples suffered in New Jersey and that *amicus curiae* documents in this brief stem from the central truth that other courts have recognized in striking down restrictions on the rights of same-sex couples to marry: marriage signifies a couple's commitment to each other in the most profound way recognized by our law and society; that, as a result, marriage extends to couples not only a menu of legal rights and privileges but also the social and symbolic recognition of that relationship's meaning and value, for which no other institution can serve as an adequate substitute.

Based on its experience with New Jersey's denial of marriage to same-sex couples, *amicus curiae* GSE urges this Court to reverse the decision below and hold that the Equal Protection Clause guarantees the right of same-sex couples to marry.

## ARGUMENT

### I. THE HISTORY OF CIVIL UNIONS IN NEW JERSEY

On June 26, 2002, six same-sex couples filed a complaint seeking a declaration that New Jersey's denial of marriage licenses to them violated the due process and equal protection guarantees of Article I, Paragraph 1 of the New Jersey Constitution and an injunction compelling the State to grant them marriage licenses. *See Lewis v. Harris*, 188 N.J. 415, 427 (2006). After the parties filed cross-motions for summary judgment, the trial court granted summary judgment to the State, *id.* at 428, a decision which was affirmed by a divided appellate panel. *See Lewis v. Harris*, 378 N.J. Super. 168 (App. Div. 2005).

On October 25, 2006, the New Jersey Supreme Court reversed, concluding that New Jersey's failure to afford same-sex couples the same rights as opposite-sex couples violated the State's equal-protection guarantee. *Lewis*, 188 N.J. at 423, 457. The court found that same-sex couples in New Jersey faced regular "social indignities and economic difficulties . . . due to the inferior legal standing of their relationships compared to that of married couples," including higher health care premiums, denial of health care coverage, and the refusal of hospitals and medical care providers to recognize same-sex partners as family members during health care crises. *Id.* at 426. Further, the New Jersey Supreme Court concluded that the State had "failed to show a public need for [its] disparate treatment" of same-sex couples in New Jersey. *Id.* at 457. In the absence of a legitimate governmental purpose, the

court held that "denying to committed same-sex couples the financial and social benefits and privileges given to their married heterosexual counterparts" violated the equal protection guarantee of the New Jersey Constitution. *Id.*

To remedy this constitutional violation, the New Jersey Supreme Court directed the State to "either amend the marriage statutes to include same-sex couples or enact a parallel statutory structure by another name, in which same-sex couples would not only enjoy the rights and benefits, but also bear the burdens and obligations of civil marriage." *Id.* at 463. The court noted, however, that purportedly "identical schemes called by different names" might offend the State Constitution. *Id.* at 459.

In response to *Lewis*, on December 12, 2006, the New Jersey Legislature enacted the Civil Union Act, stating its intent "to comply with the constitutional mandate set forth" in *Lewis*, N.J.S.A. 37:1-28(e), and purporting to provide to same-sex couples "all the rights and benefits that married heterosexual couples enjoy." N.J.S.A. 37:1-28(d). The Act directed that "[c]ivil union couples shall have all of the same benefits, protections and responsibilities under law, whether they derive from statute, administrative or court rule, public policy, common law or any other source of civil law, as are granted to spouses in a marriage." N.J.S.A. 37:1-31(a). The Legislature also established a Civil Union Review Commission ("CURC" or "the Commission"), which it charged with evaluating "the effectiveness of the act"; collecting "information about the act's effectiveness from members of the public, State agencies and private

and public sector businesses and organizations"; determining "whether additional protections are needed"; and determining "the effect on same-sex couples, their children and other family members of being provided civil unions rather than marriage." N.J.S.A. 37:1-36(c).

In February 2008, the CURC issued an interim report setting forth its preliminary finding that the Civil Union Act failed to comply with the constitutional requirements of *Lewis*. The Commission cited evidence that the Civil Union Act was not guaranteeing to same-sex couples the full rights and benefits enjoyed by heterosexual married couples in the State. N.J. CURC, *First Interim Report of the New Jersey Civil Union Review Commission* (Feb. 19, 2008) ("*Interim Report*"), *available at* http://www.state.nj.us/lps/dcr/downloads/1st-InterimReport-CURC.pdf (last visited Feb. 25, 2015). For example, the Commission detailed significant disparities between the legal protections and benefits afforded to couples in civil unions in New Jersey and those permitted to marry in the areas of employment and health care and cited evidence that same-sex couples and their children face the stigma of "second-class legal status." *Id.* at 4, 9-13.

Six months later, the CURC issued its final report, in which it unanimously concluded that the Civil Union Act's creation of a parallel civil union status "invites and encourages unequal treatment of same-sex couples and their children" and "demonstrates that the provisioning of the rights of marriage through the separate status of civil unions perpetuates the unequal treatment of committed

same-sex couples." N.J. CURC, *The Legal, Medical, Economic & Social Consequences of New Jersey's Civil Union Law* 1-2 (Dec. 10, 2008) ("*Final Report*"), *available at* http://www.nj.gov/lps/dcr/downloads/CURC-Final-Report-.pdf (last visited Feb. 25, 2015). In light of "the overwhelming evidence presented to the Commission," the CURC unanimously recommended to the Legislature and the Governor that the law be amended "to allow same-sex couples to marry" and that it be done "expeditiously because any delay in marriage equality will harm all the people of New Jersey." *Id.* at 3.

New Jersey's political branches failed to act to remedy the problems identified by the CURC. A bill providing for marriage equality cleared the Senate Judiciary Committee in 2009, but the full Senate refused to pass the measure. *See N.J. Senate Rejects Bill Legalizing Gay Marriage*, Star-Ledger, Jan. 7, 2010. Two years later, the New Jersey Legislature passed a gay marriage bill, but it was vetoed by Governor Chris Christie. MaryAnn Spoto, *Gov. Christie Vetoes N.J. Gay Marriage Bill*, Star-Ledger, Feb. 18, 2012.

As a result, same-sex couples in New Jersey returned to the courts. Specifically, on March 18, 2010, the plaintiffs in *Lewis* filed a motion in aid of litigants' rights with the New Jersey Supreme Court. *See* N.J. Court Rule 1:10-3. In that motion, the *Lewis* plaintiffs contended that the CURC's findings–as well as evidence adduced by the Legislature during hearings on the marriage equality bill pending in 2009–conclusively demonstrated that the State's Civil Union Act violated the equal-protection principle

announced in *Lewis*. Thus, the *Lewis* plaintiffs argued, they were entitled to relief from the New Jersey Supreme Court in the form of an order permitting them and all other same-sex couples to marry in the State. On July 26, 2010, the Court denied the motion without prejudice to the matter being raised in a new lawsuit. *Lewis v. Harris*, 202 N.J. 340 (2010).

On June 29, 2011, a group of plaintiffs, including GSE, filed suit in the Superior Court of New Jersey, alleging that New Jersey's exclusion of same-sex couples from the institution of civil marriage violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment, as well as the equal protection and due process guarantees of Article I, Paragraph 1 of the New Jersey Constitution. Plaintiffs' state and federal equal protection claims survived pretrial motion practice, *see Garden State Equality v. Dow*, No. MER-L-1729-11, 2012 N.J. Super. Unpub. LEXIS 360 (N.J. Super. Ct.-L. Div. Feb. 21, 2012), and the case proceeded to discovery. The *GSE* lawsuit focused on the experiences of six same-sex couples–two of whom were named plaintiffs in the *Lewis* litigation–and upon the myriad harms that were visited upon them by their relegation to the separate civil union status.

While fact discovery was ongoing, this Court issued its opinion in *Windsor* striking down DOMA and holding that the federal government must extend federal marital benefits to same-sex couples who are lawfully married in states that have granted same-sex couples the right to civil marriage. Immediately following that decision, GSE moved for

summary judgment arguing that the civil union regime violated state and federal equal protection principles because, post-*Windsor*, New Jersey's same-sex couples would be denied the full panoply of federal marriage benefits that they would receive were they permitted to marry. The superior court granted GSE's motion for summary judgment, *Garden State Equal. v. Dow*, 2013 N.J. Super. Unpub. LEXIS 2585, at *88 (Law Div. Sept. 27, 2013) ("the current inequality visited upon same-sex civil union couples offends the New Jersey Constitution, creates an incomplete set of rights that *Lewis* sought to prevent, and is not compatible with a reasonable conception of basic human dignity"), and the New Jersey Supreme Court subsequently denied the State's request for a stay, finding that after *Windsor*, "same-sex couples in New Jersey are now being deprived of the full rights and benefits the State Constitution guarantees." *Garden State Equality v. Dow*, 216 N.J. 314, 326 (2013). The State then withdrew its appeal.

While same-sex marriage is now legal in New Jersey, that State's failed experiment with civil unions demonstrates that equality can never be fully realized by relegating same-sex couples to a state-created separate status. More to the point here, the New Jersey experience shows the real effects of denying marriage to similarly situated couples solely on the basis of their sexual orientation.

## II. DENYING SAME-SEX COUPLES MARRIAGE LICENSES DEPRIVES THEM OF FEDERAL BENEFITS

DOMA had prohibited the federal government from recognizing legal same-sex marriages authorized

by state law. 1 U.S.C. § 7. Its invalidation by this Court therefore prompted federal agencies to re-evaluate whether same-sex couples were eligible for federal benefits. Most agencies reacted to *Windsor* by extending benefits to all legally married same-sex couples but denying the same benefits to those same-sex couples that were in civil unions or some other lesser legal arrangement. Thus, for example:

- The Office of Personnel Management, announced that same-sex couples in civil unions were not entitled to benefits under federal health benefit, life insurance, or long-term care insurance programs. *See* Office of Personnel Management Benefits Administration Letter No. 13-203 (July 17, 2013), *available at* https://www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2013/13-203.pdf (last accessed Feb. 25, 2015) (explaining that "same-sex couples who are in a civil union or other forms of domestic partnership other than marriage will remain ineligible for most Federal benefits programs");

- The State Department decided that it would only recognize actual marriages when determining spousal eligibility for immigration purposes. *See* U.S. Dep't of State, "U.S. Visas for Same-Sex Spouses: FAQs for Post-Defense of Marriage Act," *available at* http://travel.state.gov/content/dam/visas/DOMA/DOMA%20FAQs.pdf (last visited Feb. 25, 2015);

- The Department of Defense made clear that it would extend benefits only to legally married same-sex couples. *See* Press Release, American Forces Press Service, DOD Announces Same-Sex

Spouse Benefits (Aug. 14, 2013), *available at* http://www.defense.gov/news/newsarticle.aspx?id=120621 ("[I]n consultation with the Department of Justice and other executive branch agencies, the Defense Department will make spousal and family benefits available . . . regardless of sexual orientation, as long as service member-sponsors provide a valid marriage certificate.");

- The Department of Labor announced that it too would only extend benefits to legally married same-sex couples. Wage and Hour Division, U.S. Department of Labor, "Fact Sheet #28F: Qualifying Reasons for Leave under the Family and Medical Leave Act" (2013) (defining spouse for the purposes of the FMLA as "a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including 'common law' marriage and same-sex marriage."); U.S. Department of Labor, "Guidance to Employee Benefit Plans on the Definition of 'Spouse' and 'Marriage' under ERISA and the Supreme Court's Decision in United States v. Windsor," *available at* http://www.dol.gov/ebsa/newsroom/tr13-04.html (last accessed Feb. 25, 2015) (excluding civil union partners from spousal coverage under the Earned Retirement Income Security);

- The Internal Revenue Service issued a ruling confirming that same-sex married couples would be treated the same as opposite-sex married couples for federal tax purposes, but that civil union couples would be treated differently. Rev. Rul. 2013-17, at 4, 12; ("For Federal tax purposes,

the term 'marriage' does not include registered domestic partnerships, civil unions, or other similar formal relationships recognized under state law that are not denominated as a marriage under that state's law."); and

- The Centers for Medicare & Medicaid Services ("CMS") issued a memorandum directing Medicare Advantage organizations to cover services in skilled nursing facilities for "validly married" same-sex spouses, to the same extent that services would be required for opposite-sex spouses. Memorandum from Danielle R. Moon, Director of CMS, "Impact of *United States v. Windsor* on Skilled Nursing Facility Benefits for Medicare Advantage Enrollees," August 29, 2013, *available at* http://www.cms.gov/Medicare/HealthPlans/HealthPlansGenInfo/Downloads/SNF_Benefits_Post_Windsor.pdf (last visited Feb. 25, 2015).

In short, as these administrative actions in the wake of *Windsor* show, to deny marriage licenses to same-sex couples is to deny them myriad federal benefits that legally married couples enjoy. The resulting violation of the Equal Protection Clause ought not be countenanced.

## III. New Jersey's Experience with Civil Unions Demonstrates That Denying Same-Sex Couples the Right to Marry Denies Them Equal Protection

LGBT couples' experiences in New Jersey demonstrate that–even putting aside the issue of federal marriage benefits–the difference between marriage and civil unions is not one of mere

nomenclature. Rather, as the CURC found and as *GSE v. Dow* plaintiffs showed in the course of the litigation, during New Jersey's six-year experiment with civil unions, same-sex couples routinely encountered significant obstacles in exercising their civic rights, including problems being allowed to make decisions regarding medical treatment for their civil union partners, withholding of health benefits and workplace protections, and denial of rights accorded others by family law. *Final Report* at 11-15. These burdens also unfairly disadvantaged the children of same-sex couples.

This disparate treatment of same-sex couples in New Jersey cannot be regarded simply as private discriminatory conduct by individuals who act in contempt or ignorance of the law. Rather, it was a direct product of the State's refusal to allow same sex couples to marry. As the Commission reported, "denying . . . access to the widely recognized civil institution of marriage while conferring legal benefits under a parallel system . . . imposes a second-class status on same-sex couples and sends the message that it is permissible to discriminate against them." *Final Report* at 8. The inequality found by the Commission, described below, will exist in any state where same-sex couples are prohibited from marrying. *Final Report* at 2. *See also Latta v. Otter*, 771 F.3d 496, 500 (9th Cir. 2014) ("preventing same-sex couples from marrying and refusing to recognize same-sex marriages celebrated elsewhere, impose profound legal, financial, social and psychic harms on numerous citizens of those states") (internal quotation marks and citation omitted).

### A. Civil Union Couples in New Jersey Lacked Workplace Benefits and Protections Equal to Their Married Counterparts

In *Lewis*, the New Jersey Supreme Court noted that "[w]ithout the benefits of marriage," same-sex couples were forced to pay "excessive health insurance premiums because employers did not have to provide coverage to domestic partners." *Id.* at 426.[2] Additionally, the Court found, same-sex couples "receive fewer workplace protections than married couples." *Id.* at 449. The Civil Union Act did not fix those problems; rather, inequality in employment benefits and workplace protections persisted until same-sex couples were afforded the right to marry. During New Jersey's experiment with civil unions, lesbian and gay employees were routinely denied benefits–including health insurance–that were extended to heterosexual married employees. *Final Report* at 11-13.

As one New Jersey resident testified, after being denied coverage for his civil union partner–who, as a result, had to buy more costly, less comprehensive insurance–the "civil union" designation served as an invitation to employers to treat same-sex couples

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[2] *See also Diaz v. Brewer*, 656 F.3d 1008 (9th Cir. 2011), *cert. denied*, 2013 U.S. LEXIS 4941 (June 27, 2013) (plaintiffs successfully challenged Arizona law preventing state employees from enrolling their same-sex partners in state health insurance due to their inability to marry); *Andersen v. King County*, 158 Wn.2d 1, 41-42 (Wash. 2006) ("many day-to-day decisions that are routine for married couples are more complex, more agonizing, and more costly for same-sex couples. A married person may be entitled to health care and other benefits through a spouse.").

differently. *See* CURC Hr'g, Sept. 26, 2007, at 79 (Test. of Robert Corcoran). At the very least, the designation caused confusion on the part of employers, who were accustomed to administering benefits based upon marriage and, as one employment law attorney told the Commission, were "questioning whether they have to provide benefits" to couples in civil unions because their benefits "plan says 'spouse' or 'marriage.'" CURC Hr'g, Oct. 24, 2007, at 81 (Test. of Luanne Peterpaul). *See also* CURC Hr'g, Nov. 5, 2008, at 43-44 (Test. of John Corbitt), *available at* http://www.nj.gov/oag/dcr/downloads/Transcript-CURC-11052008.pdf (last visited Feb. 25, 2015). But whether due to confusion or not, the result was the same: employers did not extend equal benefits to those who were not actually married. Thus, the CURC hearings revealed that an employer denied health care coverage to a Vietnam veteran's civil union partner because the employer's benefits were "only available to legally married spouses," CURC Hr'g, Sept. 26, 2007, at 64-65 (Test. of Donald Rogers); a major pharmaceutical company refused to list an employee's civil union partner as a surviving "spouse" under its pension plan, *id.* at 68-69; an employer denied its employees' civil union partners flex-spending accounts, *id.* at 98 (Test. of Jesse Thompson Adams); and a major airline denied an employee the right to take family leave to care for his civil union partner, CURC Hr'g, Oct. 24, 2007, at 97-98 (Test. of Henri Simonetti). Indeed, as the example of a *GSE v. Dow* plaintiff illustrated, even the State of New Jersey failed to provide benefits to its employees' civil union partners. Thus, the plaintiff, an employee of a New Jersey community college,

temporarily lost his health insurance coverage for his civil union partner and children because the State's insurance auditor did not recognize civil union as a valid relationship. Compl. ¶ 14, *GSE v. Dow*, MER-L-1729-11 (N.J. Super. Ct., L. Div. June 29, 2011).

Furthermore, the relegation of committed same-sex couples to civil union status caused disparate treatment of lesbian and gay employees subject to collective bargaining agreements ("CBAs"). Thus, if a previously negotiated CBA referred only to "spousal" benefits, those contracts excluded from coverage those who were not married, even if they were in civil unions. CURC Hr'g, Sept. 26, 2007, at 42-44 (Test. of Jodi Weiner, Int'l Bhd of Elec. Workers Local 456); *see also* CURC Hr'g, May 21, 2008, at 41 (Test. of Mauro Camporeale, Ex. Dir., Bergen Ct'y Central Trades and Labor Council, AFL-CIO), *available at* http://www.nj.gov/oag/dcr/downloads/Transcript-CURC-and-Public-Hearing-05212008.pdf (last visited Feb. 25, 2015). That is, because they could not marry, lesbian and gay workers were "treated differently from straight employees." CURC Hr'g, May 21, 2008, at 38 (Test. of Carla Katz, Pres., Commc'ns Workers of Am. Local 1034), Ex. 20; *id.* at 49 (Test. of Rosemarie Cipparulo) ("[I]t's demoralizing and divisive for workers in the same job title, doing the same work, to be subject to different benefits").

Exclusion from marriage also created additional adverse consequences for employees of companies that funded their own insurance plans–nearly fifty percent of New Jersey, *Final Report* at 11–and were therefore governed by the federal Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et*

*seq.*, ("ERISA"), which allows self-insured employers to choose how to define "spouse." As the CURC found, ERISA-governed New Jersey employers who provide marriage-based benefits frequently declined to expand their spousal definitions to include partners in civil unions, thus denying healthcare, pension, and other benefits to those who could not marry. *Id.* at 11-12. One witness testified that he would be unable to continue the health care coverage of his civil union partner after his retirement because Johnson & Johnson, his employer of 29 years, refused coverage under ERISA. CURC Hr'g, Oct. 15, 2008, at 54-55 (Test. of Roger Asperling). Similarly, employers often invoked other provisions of federal law that reference marriage to deny same-sex couples benefits, including so-called "COBRA" benefits after termination of employment under 29 U.S.C. §§ 1161-1169, *see* CURC Hr'g, Sept. 26, 2007, at 91 (Test. of Thomas Mannix). In stark contrast to New Jersey, the CURC found that in states such as Vermont and Massachusetts where marriage equality was the law, ERISA-governed employers routinely extended benefits to same-sex partners. *Final Report* at 6, 11, 20; CURC Hr'g, March 19, 2008, at 132-33 (Test. of Mark Solomon, Dir., Mass Equality), *available at* http://www.nj.gov/oag/dcr/downloads/Transcript-CURC-03192008.pdf (last visited Feb. 25, 2015); CURC Hr'g, Sept. 26, 2007, at 38 (Test. of Tom Barbera, V. Pres., AFL-CIO).

Finally, civil unions undermined workplace equality for same-sex couples because, in order to obtain benefits regularly provided to others, these couples had to advocate with their employers for coverage. That inquiry required them to divulge

details of their private lives in the employment context, making them more vulnerable to discrimination. Louise Walpin, a *GSE v. Dow* plaintiff, "felt compelled to inquire whether her prospective employers offered benefits to civil union partners when looking for a nursing job in New Jersey," and often "wonder[ed] whether some employers discriminated against her and did not hire her because her inquiries disclosed her sexual orientation." Compl. ¶ 47, *GSE v. Dow*. This type of forced "outing," of course, does not exist in jurisdictions where same-sex couples are allowed to marry.

### B. Same-Sex Couples, Because They Could Not Marry, Faced Unequal Treatment and a Lack of Recognition in Public Accommodations and Civic Life Under the Civil Unions Act

Beyond workplace benefits, the record before the CURC revealed that the inequality effected by extending same-sex couples the right to enter a civil union but not marriage extended to nearly all aspects of these couples' financial, commercial, and civic dealings, perpetuating what the New Jersey Supreme Court called a "system of disparate treatment." *Lewis*, 188 N.J. at 453.[3] The civil union

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[3] *See also Windsor*, 133 S. Ct. at 2681 ("purpose and effect" of law denying recognition to same-sex marriages "are to impose a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages made lawful by the unquestioned authority of the States"); *Perry v. Brown*, 671 F.3d 1052, 1063-64 (9th Cir. 2012), *vacated and remanded by Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013) (noting that preventing same-sex couples from marrying "lessens the status and human dignity of gays and lesbians in California, and [] officially reclassif[ies]

designation–that is, the inability to marry–proved a symbol of difference and inferiority for same-sex couples and an obstacle to their participation in myriad aspects of civic life.

As the Commission observed, many civil union couples encountered "obstacles and frustrations" because government, employer, and health care forms would "not address or appropriately deal with the status of being in a civil union." *Final Report* at 9. This "lack of recognition," *id.*, resulted in "unequal treatment" for same-sex couples, *id.* at 14, which "persist[ed] despite directives from the New Jersey Department of Health and Senior Services regarding the implementation of the Civil Union Act." *Id.* at 15.

Indeed, local branches of nationwide financial services, real estate, and other companies delayed or altogether refused to change their policies, forms, or

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their relationships and families as inferior to those of opposite-sex couples" and "single[s]out a disfavored group for unequal treatment"); *Campaign for Southern Equal. v. Bryant*, 2014 U.S. Dist. LEXIS 165913, at *5 (S.D. Miss. Nov. 25, 2014) ("Mississippi's same-sex marriage ban deprives same-sex couples and their children of equal dignity under the law. Gay and lesbian citizens cannot be subjected to such second-class citizenship."); *In re Marriage Cases*, 183 P.3d 384, 445 (Cal. 2008) (noting that denying marriage only to same-sex couples risks "caus[ing] the new parallel institution that has been made available to those couples to be viewed as of a lesser stature than marriage and, in effect, as a mark of second-class citizenship"); *Kerrigan v. Comm'r of Pub. Health*, 289 Conn. 135, 151 (Conn. 2008) ("[m]aintaining a second-class citizen status for same-sex couples by excluding them from the institution of civil marriage *is* the constitutional infirmity at issue." (quoting *Opinions of the Justices to the Senate*, *supra*, 440 Mass. 1201, 1209 (Mass. 2004)) (emphasis in original)).

computer programs to accommodate the new and anomalous legal category engendered by "civil unions." As a result, individuals–because they could not marry–were forced to supply additional information or documentation, in order to engage in financial transactions, CURC Hr'g, Oct. 24, 2007, at 61-63 (Test. of Kevin Slavin); buy or refinance a house, *id.* at 47 (Test. of Rose Levant-Hardy); apply for insurance, Compl. ¶ 33(c), *GSE v. Dow*; or even arrange for the funeral of a loved one, *id.* ¶ 33(b). This contributed to the inferior status profoundly experienced by same-sex couples, as did the difficulty experienced by these couples in filing their taxes. CURC Hr'g at 107, Oct. 24, 2007 (Test. of Leslie Farber, Chair, N.J. State Bar Assoc. Gay, Lesbian, Bisexual, Transgender and Intersex Section); Compl. ¶ 44, *GSE v. Dow*; *see also Quarto v. Adams*, 395 *N.J. Super.* 502 (App. Div. 2007) (resolving dispute of same-sex couple married in Canada with Division of Taxation regarding ability to file joint tax. return). Likewise, many government agencies failed to accord equal recognition to same-sex couples, even those in civil unions. Thus, one witness before the CURC encountered difficulty at the Department of Motor Vehicles when attempting to change his surname to match that of his civil union partner. Sept. 26, 2007 CURC Hr'g at 98-99 (Test. of Jesse Thompson Adams). Likewise, prospective jurors in civil unions often felt compelled to "out" themselves during *voir dire* by stating their relationship status in response to the question whether they are married or single. *See* CURC Hr'g, Oct. 10, 2007, at 67-68 (Test. of Veronica Kairos); Compl. ¶ 32, *GSE v. Dow*.

Unequal treatment of same-sex couples also persisted in hospitals and critical-care settings even though New Jersey law required hospitals to recognize the rights of individuals in civil unions to access their partners during medical treatment. *Final Report* at 14; May 21, 2008 CURC Hr'g at 20-21 (Test. of John Calabria, Dep't of Health and Senior Servs.). Several *GSE v. Dow* plaintiffs were subject to this mistreatment. Daniel Weiss was denied access for a painfully long period, after his partner, John T. Grant, had been struck by a car and rushed to an emergency room with a shattered skull and an epidural hematoma; still, hospital staff insisted on calling John's sister and having her drive four hours to the hospital in the middle of the night so she could sign medical authorizations for him. Compl. ¶ 31(a), *GSE v. Dow*. When Tevonda Bradshaw went into labor and was admitted to the hospital, her partner, Erica Bradshaw, was not recognized as the child's parent and Erica was forced to go home to retrieve Tevonda's identification while Tevonda was in the process of giving birth to their child, even though Erica and Tevonda were in a civil union. *Id.* ¶ 31(b). And on two occasions, Cindy Meneghin had to explain to emergency room staff that her partner, Maureen Kilian, had a right to make decisions on Cindy's behalf if she could not do so herself, just as she would if they were married. *Id.* ¶ 31(d).

These incidents are not isolated. Many health care providers informed civil union partners that they were not entitled to receive health information about their partners or to be in the same room with them while they receive treatment. *See* CURC Hr'g,

Oct. 10, 2007, at 12-13 (Test. of Paul Walker); CURC Hr'g, Oct. 24, 2007, at 51-52 (Test. of Lori Davenport); N.J. Sen. Judiciary Comm. Hr'g at 59 (Dec. 7, 2009) (Test. of William Paul Beckwith) (recounting that a New Jersey hospital emergency worker refused to recognize him as next-of-kin for his civil union partner). One individual, prior to having surgery, noticed that a hospital worker changed the status of her emergency contact from "civil union partner" to "friend," a status that has no legal meaning, but epitomizes the denigration of committed relationships that was experienced routinely by same-sex couples because they could not actually marry. N.J. Sen. Judiciary Comm. Hr'g at 180 (Test. of Margaret Maloney). Nor were these incidents inconsequential: the lack of recognition of a status other than marriage led to delays in the provision of critical care in life-threatening situations. *See* CURC Hr'g, Oct. 24, 2007, at 27-29, *and* CURC Hr'g, Oct. 15, 2008, at 40-47 (Test. of Gina Pastino) (explaining delay in son's emergency treatment due to time spent with hospital staff explaining relationship of partner to her son).

New Jersey's experience teaches that this unequal treatment flows from the designation of same-sex couples as something other than married. In the words of one individual whose civil union partner was denied access to her in a life-threatening situation, had her partner been able to say "'This is my spouse, and we are married,' people would instantly know the significance of that relationship. They may not like it, but at least everybody has a frame of reference in this society regarding the term marriage and spouse and husband and wife.

Everybody knows what that means." Oct. 15, 2008 CURC Hr'g at 43-44 (Test. of Gina Pastino), Ex. 23.

In contrast to these New Jersey couples, married same-sex couples have had their relationships recognized and given full effect in these most vulnerable moments. For example, one Massachusetts woman described the "huge relief" that marriage brought her and other same-sex couples, because "[i]f you have a car crash and end up in the hospital that you don't know, or an ER, you know that you're going to be treated like anybody else." CURC Hr'g, April 16, 2008, at 52 (Test. of Marsha Hams), *available at* http://www.nj.gov/oag/dcr/downloads/Transcript%20CURC-and-Public-Hearing-04162008.pdf (last visited Feb. 25, 2015). Meanwhile, by compelling contrast, one individual described the pain of having his out-of-state marriage go unrecognized in New Jersey and the relief he experience when same-sex marriage was legalized.

> We moved out here from California 3 years ago and were immediately down-graded to a civil union. It was infuriating that our legal marriage was not recognized as such. We've been married for 13 years, granted legally only for a portion of that. Having our marriage recognized, and marriage equality in New Jersey has affirmed our relationship as being as valid as my sister and brother-in-law's (who, as an aside, was the Rabbi who married us when it was still illegal). Civil unions are a far cry from being married, and not very affirming of the love we have. Since New Jersey recognizes our

> marriage, we can file married on the federal level, which has dramatically improved our tax situation. It also makes it impossible for employers to discriminate and not cover my husband with the myriad of benefits that come with employment. Being married is one of the great joys in our life, and having it recognized by the State as well as the Feds, while it does nothing for our love or commitment to each other, affirms it to others and makes us equal citizens.

Statement of Lee Shapiro-London in Email from GSE, Feb. 27, 2015.

Finally, the lack of recognition encountered by same-sex couples in New Jersey was magnified when they travelled outside of New Jersey. Several *GSE v. Dow* plaintiffs experienced anxiety about traveling for fear that, in the event of an emergency, their civil union status would not be recognized, because it was not marriage. Compl. ¶ 34, *GSE v. Dow*. For example, plaintiff Daniel Weiss carried paper and electronic copies of his healthcare proxies everywhere he went, in the event that such an emergency occurred. *Id.* ¶ 42.

In sum, these anecdotes from New Jersey demonstrate not merely the unique and anomalous legal status of civil unions, which were routinely unrecognized by private organizations and public agencies. But the treatment afforded same-sex couples by government workers, medical staff and facilities, is illustrative of a principle that is more directly relevant here: that same-sex couples suffer

in very real ways when they are not permitted to marry.

### C. Same-Sex Couples and Their Children Suffered Disparate and Unfair Financial Burdens Under the Civil Unions Regime Because They Could Not Marry

The Civil Union Review Commission concluded that, even after the passage of the Civil Union Act, same-sex couples continued to face economic and financial inequities, and that these disadvantages had a predictably negative impact on their children. *Final Report* at 24. Specifically, the Commission concluded that, as many individuals testified, the Civil Union Act did little to alter the preexisting norm, where, faced with uncertain legal standing, same-sex couples were forced to face "[t]he prospect of litigating from now into eternity to get the benefits and protections" that married couples receive as a matter of course. Sept. 26, 2007 CURC Hr'g at 85 (Test. of Steven Carter). *See also Final Report* at 14. As a consequence, civil union couples and their families found themselves bearing the expensive burden of taking legal steps to effect the recognition of their relationships in New Jersey while opposite-sex married couples enjoyed clear, statutorily prescribed rights. Unsurprisingly, this burden was experienced most acutely by lower income New Jersey residents, who are disproportionately people of color. *See* CURC Hr'g, May 21, 2008, at 32-33 (Test. of Nicole Sharpe, Office of the Pub. Advocate); *Final Report* at 14. By contrast, in marriage equality states, married same-sex couples no longer need, in the words of one CURC witness from Massachusetts,

to use "a special gay rights lawyer" to effect financial and real estate transactions. CURC Hr'g, April 16, 2008, at 53 (Test. of Sue Shepherd).

For example, despite the Civil Union Act's requirement that "laws related to tuition assistance or higher education for surviving spouses or children" apply "in like manner" to civil union couples, N.J.S.A. 37:1-32(v), the Free Application for Federal Student Aid used by New Jersey neither recognized the legal relationship of same-sex parents, nor permitted children to list one parent as a second dependent in the household, disqualifying them from certain grants or unsubsidized loans. *Id.* at 14. Thus, children of same-sex couples were often denied financial aid to which they may be entitled. CURC Hr'g, April 16, 2008, at 13-14 (Test. of Jane Oates, Exec. Dir., Comm'n on Higher Educ.).

This inequality was, as the Director of New Jersey's financial aid program acknowledged to the Commission, purely a matter of administrative convenience: "[T]he problem," he stated, "is in order to have a new separate database, we have to create a new form, new process, duplicate the application process, duplicate . . . the information process, and that's just something that's extremely expensive and almost impossible" given current fiscal constraints. *Id.* at 19 (Test. of Michael Angulo, Exec. Dir., N.J. Higher Educ. Student Assistance Auth.). *See also Final Report* at 30 (noting that the costs of changing the system have not been budgeted by the government).

### D. The Maintenance of a Separate Non-Marriage Status Harmed Certain Children and Deprived Them of Equal Treatment

In addition to the disparate financial burdens faced by same-sex couples and their families, children of same-sex parents, as well as lesbian and gay youth, in New Jersey were harmed by the State's relegation of same-sex relationships to an alternate and inferior status. Indeed, New Jersey's maintenance of the separate civil union status sent a message that "same-sex couples are not equal to different-sex married couples in the eyes of the law, that they are 'not good enough' to warrant true equality." *Final Report* at 2; *see also id.* at 35 ("'[I]t is apparent that affording access to [marriage] exclusively to opposite-sex couples, while providing same-sex couples access only to a novel alternative designation, realistically must be viewed as constituting significant unequal treatment to same-sex couples.'") (quoting *In re Marriage Cases*, 183 P.3d at 445).

As the New Jersey Supreme Court acknowledged, "[c]hildren have the same universal needs and wants, whether they are raised in a same-sex or opposite-sex family," *Lewis*, 188 N.J. at 451, and, thus, one of the core purposes of assigning legal significance to committed relationships is to meet those "needs and wants" by encouraging committed, monogamous relationships among parents. *Id.* at 453; *see also Windsor*, 133 S. Ct. at 2694 (DOMA, by failing to recognize same-sex marriages, "humiliates tens of thousands of children now being raised by same-sex couples. The law in question makes it even more difficult for the children to understand the integrity

and closeness of their own family and its concord with other families in their community and in their daily lives."); *accord* Kitchen v. Herbert, 755 F.3d 1193, 1226 (10th Cir. 2014); *Perry v. Brown*, 671 F.3d at 1069 n.4 (9th Cir. 2012) ("the children of same-sex couples benefit when their parents marry") (citing *Perry v. Schwarzenegger (Perry IV)*, 704 F. Supp. 2d at 2010, 973, 980-81)); *Varnum v. Brien*, 763 N.W.2d 862, 883 (Iowa 2009) ("Society benefits . . . from providing same-sex couples a stable framework within which to raise their children . . . , just as it does when that framework is provided for opposite-sex couples."). Even civil unions, we now know, have a destabilizing effect on the children of same-sex parents, in light of the legal uncertainty and economic disadvantages visited upon same-sex couples, all of which "prevent children of same-sex couples from enjoying the immeasurable advantages that flow from the assurance of a stable family structure in which the children will be reared, educated, and socialized." *Final Report* at 36.

Indeed, New Jersey's experience demonstrates that denying same-sex couples the right to marry places children in a state of fear and vulnerability, which is the natural result not only of the palpably different treatment these families receive in numerous settings, but of the inevitable perception that their families are different from and inferior to other families. Dr. Judith Glassgold, a licensed practicing psychologist, testified that the Civil Union Act contributed to an already existing stigma associated with homosexuality, which affects the children of same-sex relationships just as much as their parents. April 16, 2008, CURC Hr'g, at 44-45.

Mary Jean Weston, a licensed clinical social worker and Assistant Executive Director of the National Association of Social Workers-New Jersey, testified that children of same-sex couples under the Civil Unions Act regime were "forced to understand and, worse yet, explain the stigmatizing and cumbersome label of civil union." *Id.* at 65.

The children of same-sex couples experienced this stigma and vulnerability in a powerful and poignant way. For example, Kasey Nicholson-McFadden, the son of two *GSE v. Dow* plaintiffs, testified before the New Jersey Senate Judiciary Committee that, "it doesn't bother me to tell kids that my parents are gay, but it does bother me to say they can't get married, because it makes me feel that our family is less than their family." N.J. S. Jud. Comm. Hr'g at 113 (Dec. 7, 2009); Compl. ¶ 13, *GSE v. Dow*. A religious leader who officiates at many weddings testified that, in his experience, children of same-sex couples were confused by the label of "civil union" which implies that their parents' union "is something less" and not "as meaningful" as marriage. CURC Hr'g, Nov. 5, 2008, at 29-31 (Test. of Charles Stevens). Kathryn Dixon, Vice President of the National Association of Social Workers, affirmed that civil unions did little to alleviate the stigma felt by same-sex families, as her colleagues had "to spend session hours hearing the grief of children and families related to these issues." N.J. S. Jud. Comm. Hr'g (Dec. 7, 2009), at 102.

In contrast, the CURC heard testimony from same-sex couples who are legally married in other jurisdictions regarding the positive impact that being

married had on their children. *See Final Report* at 22; CURC Hr'g, April 16, 2008, at 58-61 (Test. of Laura Patey) (stating that her marriage was "always in the forefront of [her son's] thinking" because it gave him "a sense of validation of being part of a real family"); *id.* at 60-61 (Test. of Leah Powers) ("I cannot tell you the impact that 15 minutes and the marriage license had on our two young guys."). One adult child of a same-sex couple from Massachusetts testified that, growing up, he had been constantly "afraid to ask my teammates or friends to stay at the house because I was afraid that they would *see* that my parents have one . . . bedroom, but I was also afraid that my coach would either cut me from the team or bench me, and that was something that happened all the way up until my parents got married," at which point he "felt like finally I was protected." CURC Hr'g, April 16, 2008, at 47 (Test. of Peter Hams), Ex. 18. This witness described the marriage of his parents as "the biggest thing in my life." *Id.*

Gay and lesbian youth were also deeply affected by the inferior label of civil unions, which was a powerful symbol of their unequal status in New Jersey. As one young person stated in 2009, "[i]n New Jersey I am a second-class citizen, someone who does not have equal rights, someone who it is perfectly okay to treat differently according to the State government." N.J. S. Jud. Comm. Hr'g at 105 (Dec. 7, 2009) (Test. of John Otto). By contrast, children in states with marriage equality are encouraged to participate, not only in society, but also in the kind of stable relationships that are, after all, what marriage is all about. *See* CURC Hr'g, April

16, 2008, at 54 (Test. of Peter Hams) (describing reaction of gay teenagers to the marriage of his same-sex parents: "[Y]ou can *see* in their eyes that finally there's hope that their relationship is just as good as anybody else's."). Dr. Marshall Forstein, Associate Professor of Psychiatry at Harvard Medical School, testified that, for lesbian and gay teenagers who already face a heightened risk of suicide, depression, and marginalization, the full extension of equal rights through marriage equality "has significant meaning both internally and socially" with great potential for mitigating their sense of isolation and stigma. *Id.* at 33. He testified that the same is true for the children of same-sex parents, noting that since the advent of marriage equality in Massachusetts, "there's a sense that the children themselves have new status in the culture because their parents are legal." *Id.* at 37.

### E. The Unequal Treatment Resulting from the Civil Unions Act's Withholding of Marriage Caused Psychological and Dignitary Harm to Same-Sex Couples

Finally, same-sex couples suffer psychological and dignitary harm as a result of not being permitted to marry. History shows that the burden has fallen on same-sex couples to attempt, even when they were in civil unions, to try to convince the world that their relationships should be considered equal to different-sex relationships. For example, the plaintiffs in *GSE v. Dow* had to explain and justify their relationship when attempting to buy family insurance, Compl. ¶ 33(b), *GSE v. Dow*; when filling out medical forms and obtaining medical care, *id.* ¶ 33(c); and even

when making funeral arrangements for family members. *Id.* ¶ 33(a). The CURC concluded that, while "marriage" carries "persuasive weight," lesser status, including civil unions, "described situations in which they were forced to explain their civil union status, what a civil union is, and how it is designed to be equivalent to marriage." *Final Report* at 9; *see also* CURC Hr'g, Sept. 26, 2007, at 52 (Test. of Thomas Walton) ("We feel like this is going to be our lives now, explaining to people what a civil union is.").

The *GSE v. Dow* plaintiffs' relationships were, like the relationships of opposite-sex couples who may marry in New Jersey, a central element of their lives; their commitment was as solemn and meaningful as marriage. Yet these plaintiffs and other same-sex couples, including those in civil unions, were deprived of being viewed this way, thus devaluing their relationships. *See, e.g.*, Compl. ¶ 6, *GSE v. Dow* (describing Daniel Weiss and John T. Grant's "wish to be recognized as a married couple in New Jersey, where they work and make their home"); *id.* ¶ 12 (describing Marcye and Karen Nicholson-McFadden's concern that their children will be taught "that their parents' relationship or their family is of lesser importance than any other family in New Jersey"). Indeed, in New Jersey, where at least they could enter into civil unions, these couples nonetheless could "not invoke the status of marriage in order to communicate to their children and others the depth and permanence of [their] commitment in terms that society, and even young children, readily understand and respect." *Id.* ¶ 52.

Indeed, not being able to marry proved to isolate same-sex couples from the married world around them, causing emotional and psychological distress. *See* CURC Hr'g, April 16, 2008, at 33 (Test. of Marshall Forstein, M.D.) (equating civil union status with sexual orientation discrimination, which "contributes to increased rates of anxiety, depression and substance-use disorders"). And because only same-sex couples were limited to civil unions, N.J.S.A. 37:1-29 (defining civil union as "legally recognized union of two eligible individuals of the same sex"), civil union status actually reinforced the notion that sexual orientation is a legitimate basis upon which to disfavor certain classes of people. *See* CURC Hr'g, Oct. 24, 2007, at 42 (Test. of Anthony Giarmo) (explaining that, as parent of gay son, he understands civil unions to communicate that "homosexuals justifiably [can] be placed in a separate relationship category").

* * *

In sum, New Jersey's experience with civil unions establishes two essential points. First, it reminds us that marriage serves as the State's "recognition and approval of a couple's choice to live with each other, to remain committed to one another and to form a household based on their own feelings about one another and to join in an economic partnership and support one another and any dependents," *Perry v. Schwarzenegger*, 704 F. Supp. 2d at 961, and "is the principal manner in which the State attaches respect and dignity to the highest form of a committed relationship and to the individuals who have entered it," *Perry v. Brown*,

671 F.3d at 1079. And, second, it shows that denying such recognition "materially harm[s] and demean[s] same-sex couples and their children." *Latta v. Otter*, 771 F.3d 456, 472-73 (9th Cir. 2014).

Specifically, creating a separate status injures same-sex couples because, among other factors, such designation "increases costs and decreases wealth . . . because of increased tax burdens, decreased availability of health insurance and higher transactions costs to secure rights and obligations typically associated with marriage," *Perry v. Schwarzenegger*, 704 F. Supp. 2d at 978; "singles out gays and lesbians and legitimates their unequal treatment," *id.* at 979; and "instructs all . . . officials, and indeed all persons with whom same-sex couples interact, including their own children, that their marriage is less worthy than the marriages of others." *Windsor*, 133 S. Ct. at 2696.

New Jersey's experience in ultimately legalizing same-sex marriage demonstrates the same point. As one GSE member explains:

> My husband and I had our civil union on April 5, 2013, surrounded by 70 relatives and friends. We became married on December 13 of the same year, as New Jersey adopted full marriage rights for all Americans. Although we were life partners, and civil union was a wonderful commitment to that, it was in December when we truly felt "married." We can fully call each other 'husband,' knowing that it is fully recognized. We don't call it "gay marriage." We don't say we're "gay married." We are just "married,"

> and the peace of mind that comes with that is indescribable.

Statement of Joseph Rici in Email from GSE, Feb. 27, 2015.

Every individual deserves to enjoy that peace of mind; it should not be denied to anyone based upon their sexual orientation. *Amicus curiae* urges this Court to reverse the Court of Appeals' judgment and hold that the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States commands that same-sex couples be afforded the right to marry.

## CONCLUSION

For these reasons, *amicus curiae* urges that the Court reverse the judgment of the Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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